IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 16018 of 2004(F)

PETITIONER:

K.D.RAJAN,
HIGH SCHOOL ASSISTANT, GOVERNMENT HIGH SCHOOL,
THRIKODITHANAM, KOTTAYAM DISTRICT.

BY ADV. SRI.P.BABU KUMAR

RESPONDENTS:
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1. DEPUTY DIRECTOR OF EDUCATION, KOTTAYAM.

2. DISTRICT EDUCATIONAL OFFICER, KOTTAYAM.

3. HEADMISTRESS,
GOVERNMENT HIGH SCHOOL, KURICHI.

4. THE DIRECTOR,
PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

5. THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.LAKSHMI RANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20.3.2007, THE COURT ON 20/03/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 MEMO OF CHARGES ISSUED BY R2 DT.18.8.00.

P2 REPRESENTATION SUBMITTED BEFORE THE DISTRICT COLLECTOR DT.4.4.01.

P3 EXPLANATION SUBMITTED BEFORE R1 DT.8.9.00.

P4 SUSPENSION ORDER PASSED BY R1 DT.21.10.00.

P5 ATTENDANCE CERTIFICATE ISSUED BY THE SECRETARY DT.NIL.

P6 DUTY CERTIFICATE ISSUED BY THE CAMP OFFICER DT.30.3.00.

P7 DUTY CERTIFICATE ISSUED BY THE SECRETARY CAMP OFFICER DT.26.4.00.

P8 JUDGMENT IN OP.6556/99 DT.15.3.99.

P9 REPRESENTATION DT.23.12.2000.

P10 ORDER PASSED BY R1 DT.20.8.01.

P11 APPEAL MEMORANDUM FILED BY THE PETITIONER DT.3.10.01.

P12 JUDGMENT IN OP.6670/01 DT.14.9.01.

P13 ORDER DT.31.12.01.

P14 REVISION PETITION DT.27.11.02.

P15 ORDER ISSUED BY R5 DT.20.8.03.

TRUE COPY

P.A. TO JUDGE

A.K. BASHEER, J.

W.P.(C). NO. 16018 OF 2004

Dated this the 20th day of March, 2007

J U D G M E N T

Petitioner is working as a High School Assistant. While he was working in the Government Higher Secondary School, Kurichi, he was placed under suspension pending enquiry. Ext.P1 is the true copy of the memorandum of charges served on the petitioner. The gist of the allegations made against the petitioner was that he had abstained from duty with effect from February 28, 2000 till March 6, 2000 and that he had applied for leave for the above period only on April 4, 2000. Thereafter, petitioner abstained from duty again with effect from March 28, 2000 till July 2, 2000. He had neither applied for leave nor obtained permission from the authorities to abstain from duty. The other allegation was that he had failed to evaluate the answer scripts of students during the academic year 1999-2000. He had also failed to submit his income tax statement and to attend the staff meeting. The other allegation was that he refused to accept official communications sent to the school from the Department. Yet another charge against the petitioner was that there were

several complaints against him from the Parent Teachers Association.

2. Though the petitioner had submitted Ext.P3 explanation in response to Ext.P1 memorandum of charges, the Deputy Director of Education found that the petitioner was liable to be suspended from service. Accordingly, by Ext.P4 order dated October 21, 2000, petitioner was placed under suspension pending enquiry. Thereafter, by order dated August 20, 2001, petitioner was imposed with a penalty of “severe warning”. He was ordered to be reinstated in service forthwith and was posted to Government Higher Secondary School, Thrikkodithanam, where he is now working. It was further ordered that petitioner's absence would be regularised by granting him eligible leave on proper application. Ext.P10 is the true copy of the order passed by respondent No.1, the Deputy Director of Education, Kottayam. The above order was confirmed in appeal and revision by the Director of Public Instructions and the Government respectively. The orders passed by the appellate authority and the revisional authority are on record as Exts. P13 & P15 respectively in this writ petition.

3. I have heard learned counsel for the petitioner and the

learned Government Pleader and perused the impugned orders and other relevant materials placed on record. A perusal of Ext.P10 order passed by the Deputy Director of Education shows that petitioner was not given an opportunity to be heard “before imposing the penalty of severe warning” on him. As rightly pointed out by the learned counsel, the impugned order resulted in financial loss to the petitioner in as much as it had been directed that the period of suspension for eight months would be regularised by granting eligible leave to him. Petitioner should have been given notice before the punishment was imposed on him. Though it is vaguely stated that petitioner's representation was examined, it is not discernible from the order that the petitioner was in fact afforded an opportunity to present his case. There is a vague reference in Ext.P10 order that “certain lapses on the part of the petitioner with regard to his procedural formalities in his academic matter and in his dealings in the school” had been revealed. But there is no intication as to what were those lapses in the so called “procedural formalities” in petitioner's academic matter and also in his dealings in the school.

4. In my view, the order passed by respondent respondent

No.1 is totally unsatisfactory. Petitioner is justified in contending that he had not been given adequate opportunity to ventilate his grievance before the disciplinary authority passed Ext.P10 order.

I have no hesitation to hold that Ext.P10 order is totally unsustainable. The appellate authority and the revisional authority also have fallen in the same error. The orders passed by the two authorities are casual and mechanical. Therefore Exts.P10, P13 and P15 are quashed. It will be open to the disciplinary authority to pass fresh orders in the matter after affording sufficient opportunity to the petitioner to be heard. Respondent No.1 shall pass fresh orders as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.

JUDGMENT

21st DECEMBER, 2006